IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

MFA.No. 667 of 2001(B)

OP.MV.657/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
.....

APPELLANT:

SUNIL E, S/O.MEENAKSHI, AGED 30 YEARS,
ELAYEDATH HOUSE, KANNIYAMPURAM POST,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.O.P.NANDAKUMAR
SRI.V.A.AJAI KUMAR

RESPONDENTS:
---

1. A.K.BHARATHAN, S/O.A.K.KRISHNAN,
AGED 46 YEARS, BHARATHA NIVAS,
MYLUMPURAM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

2. KUNHUMUHAMMED, S/O.HYDRU, AGED 30 YRS.,
PAZHANKULATHINGAL HOUSE,
CHUNANGAD POST, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

3. THE NEW INDIA ASSURANCE COMPANY LIMITED,
SRIVELLAI BULUCHY COMPLEX, ANNIKODE JUNCTION,
CHITTUR.

4. K.K.SIMON, S/O.KARIACHAN, AGED NOT KNOWN,
28/402, MERCY COLLEGE ROAD,
PALAKKAD DISTRICT.

5. HARIDASAN, S/O.CHAMU, AGED 32 YEARS,
AMBALAPARAMBU VEEDU, KODINTHARAPPULLY.

6. THE NEW INDIA ASSURANCE COMPANY LTD.,
M.A.LINE, T.B. ROAD, PALAKKAD.

FOR R3 AND R6 ADV. SRI.A.C.DEVY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

M.F.A.No.667 of 2001-B

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 13th day of December, 2007

J U D G M E N T

J.B.Koshy, J.

The appellant claimant, at the age of 26 years, suffered head injury in a motor accident on 30/03/1997. While he was walking on the southern side of the road, he was knocked down by lorry bearing Regn.No.KRP 3082 which was driven by the second respondent coming along the road in the opposite direction. Another lorry bearing Regn.No.KLG 9606 driven by the fifth respondent was proceeding ahead of the offending vehicle. It was the abrupt swerving of that lorry that caused KRP 3082 lorry to swerve which resulted in the accident. The Tribunal found that both the drivers of the lorries were negligent. Both the lorries were insured by the same Insurance company, namely, New India Assurance Company Ltd. and apportioned liability equally. He filed an application for Rs.2,50,000/-. Tribunal

awarded Rs.1,67,018/- only. In this appeal quantum of compensation alone is disputed.

2. As regards the injuries are concerned, the Tribunal discussed the matter in detail at paragraphs 13 and 14 of the award, which reads as follows:-

> “13. Petitioner sustained head injury leading to disability in eye vision power. He was initially taken to Valluvanad Hospital, Ottapalam where from he was referred to Medical College Hospital. Petitioner remained hospitalised for a period of 22 days of which for the first 10 days he was under I.C.U. Exts.A5 and A6 are the wound certificate and O.P. Ticket of Medical College Hospital, Thrissur. The visible superficial injury was lacerated injury left tempero occipital region 10x1x1 cm. Ext.A11 series are medical prescriptions relating to petitioner's treatment. Whereas Ext.A9 series are Clinical examination reports of Medical College Laboratory. Ext.A10 is the treatment certificate issued by PW.2 Dr.Muralikrishnan. Doctor stated that on examination petitioner was found to have vision with only perception of light regarding left eye and right eye

vision power was 6/25. Petitioner could not perceive colour vision and the doctor opined that the visual disability would be about 80%. The doctor further stated in Ext.A10 he has not mentioned the percentage of disability. Ext.A7 series are CT scan report. Petitioner sustained posterior parietal depressed Fracture (L) side with a bony spicule seen narrowing the left optic forament consequent to fracture of ethnoid complex. Ext.A8 series are eye examination graph.

14. PW.3, Opthalmologist by referring to Ext.A14 stated that petitioner is having physical disability of 50% due to post traumatic optic atrophy. As far as left eye is concerned petitioner has only perception of light and hand movement whereas right eye was concerned, he was able to see only right half field of vision. Doctor further opined that the disability is incurable and permanent."

3. The Tribunal did not calculate compensation for disability on a scientific basis but awarded a lump sum amount of

Rs.1,00,000/- as compensation for disability and also Rs.12,000/- as head injury compensation. The compensation awarded for disability and loss of earning power was only Rs.1,12,000/-. As regards the income is concerned, his case was that he was employed in a dry cleaning establishment and his daily wages was Rs.75/-. He may get at least 24 days work in a month. The accident occurred in 1997. Considering the wages in Kerala, the above amount is not excessive. Therefore, monthly income can be fixed at Rs.1,800/-. With regard to the multiplier, a three member bench of the Supreme Court in **Smt.Supe Dei and others v.M/s.National Insurance Company Ltd. and another [JT 2002 (Sppl.1) SC 451]**, held that though the second schedule of the Motor Vehicles Act is framed for the purpose of awarding compensation under Section 163-A, it serves as a guideline for determination of compensation under Section 166 of the Motor Vehicles Act also. In **Abati Bezbaruah v. Dy.Director General, Geological Survey of India and another [(2003) 3 SCC 148]**, it was held that structured formula mentioned in the second schedule gives guidelines for determination of the amount of compensation in terms of Section 166 of the Motor Vehicles Act also. In **A.P.S.R.T.C**

v.M.Pentaiah Charg [(2007) AIR SCW 5689], the Supreme Court held that the second schedule should be taken in the absence of exceptional circumstances as a guideline and the multiplier system should be followed in claims under Section 166 of the Motor Vehicles Act also. It was argued by the counsel for the claimant that as per the Second Schedule, for a person aged 26 years, the apt multiplier is 18. It is argued by the counsel for the petitioner that in view of the increase in life expectancy and decrease in rate of interest. We are of the opinion that only 18 need be taken as multiplier, taking guidance of the second schedule. We have seen that physical disability assessed by the doctor is 50%. It is contended that eye sight was practically lost of both the eyes. He will not get any suitable employment in future. He will be a burden to others, unable to do things and therefore, compensation should be granted for 100% disability. However, considering the medical certificate issued to him, we are only assessing 50% loss of earning power and disability. If that be so, compensation payable will be Rs.1,800 x 12 x 18 x $^{50}/_{100}$ = Rs.1,94,400/-. From that Rs,1,12,000/- is to be deducted and the balance payable will be Rs.82,400/-. No amount was awarded for loss of marriage prospects. We award Rs.5,000/- for

the same. It was argued that compensation granted for sufferings, loss of enjoyment and amenities in future and under all other heads are very meager, considering the total amount, we are not interfering with the compensation awarded under other heads. The additional amount of Rs.82,400/- should be deposited by the New India Assurance Company Ltd. (respondents 3 and 6 in equal proportion) with 7.5% interest from the date of application till the date of deposit over and above the decreed amount by the Tribunal. Out of the above amount the appellant is allowed to withdraw Rs.25,000/- and the balance amount should be deposited in a nationalised bank for five years and the appellant is allowed to withdraw periodical interest.

M.F.A is partly allowed.

(J.B.KOSHY, J UDGE)

(K.HEMA, J UDGE

ms

J.B.KOSHY & K.HEMA, JJ.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

M.F.A.No.667 of 2001-B

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

13th December, 2007